



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

December 19, 1978

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ARIZONA ATTORNEY GENERAL

Mr. M. L. Risch, Lieutenant
ALEOAC Business Manager
P.O. Box 6638
Phoenix, Arizona 85005

Re: I78-279 (R78-240)

Dear Mr. Risch:

In your letter dated August 1, 1978, you asked this office for its advice on the following question:

May the ALEOAC hire an auditor to insure the proper application of the criminal offense penalty assessment for the police officer's training fund?

Our advice is that the ALEOAC can hire an auditor for this purpose.

Although not specifically delegated the power to hire an auditor in its statute, the ALEOAC has the implied power to do so. An administrative agency's powers are not limited to those expressly granted by statute, but may exercise all powers necessary or essential in performance of its duties. Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845, cert. den. 329 U.S. 784, (1946). This holding has evolved into a well accepted proposition of law:

It is settled beyond question that the grant of an express power by the legislature is always attended by such incidental authority as is fairly and reasonably necessary or appropriate to make it effective, and authority granted to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent. The purpose of the statute is not to be frustrated by an unduly narrow interpretation.

Rite Aid of New Jersey, Inc. v. Bd. of Pharmacy, 304 A.2d 754, 756 (N.J. Super. 1973). See also Application of Kohlman, 263 N.W.2d 674 (S.D., 1978); Wimberly v. New Mexico State Police Bd., 497 P.2d 968 (N.M. 1972).

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Assuming that an agency does have the implied power to extend its authority within reasonable limits, the question of reasonable limits remains. In State ex rel Lanier v. Vines, 164 S.E.2d 161 (N.C. 1968), the court provided guidelines for the resolution of this issue when it held that the question of reasonableness must be determined on an individual basis, in light of the purposes for which the agency was established.

The purpose of the Arizona Law Enforcement Officers Advisory Council, as stated in A.R.S. § 41-1824, is to provide training for local law enforcement officers. This is done through a council consisting of nine persons experienced and educated in the field of law enforcement who collectively make recommendations, prescribe minimum qualifications for officers, courses of training, and training facilities, determine whether the political subdivisions of the State are complying with the council's standards. §§ 41-1821 and 1822.

The funds used to subsidize counties', cities', and towns' training of police officers derive from a penalty assessment added to every fine, penalty and forfeiture collected by the courts for every criminal offense, violation of the motor vehicle statutes or ordinances, or violation of the game and fish statutes. A penalty assessment is also conditionally collected along with every deposit of bail, and is made permanent if bail is forfeited, § 41-1826(B). The penalty assessment may be waived under some circumstances, § 41-1826(D).

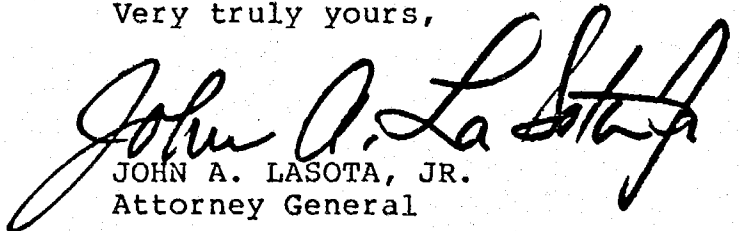
A.R.S. 41-1826(c) provides that the clerk of the court shall collect the amount due and send it to the county treasurer, who in turn transmits the funds to the state treasurer, who then deposits the money in the peace officer's training fund.

In an opinion written by this office, Atty.Gen.Op. 76-114, it was said that where the sentencing judge did not specifically include an additional penalty assessment, it would be assumed that the judge intended the assessment to come out of the fine imposed.

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The hiring of an auditor would be an action reasonably necessary as an incident to the accomplishment of the purposes for which the administrative agency was created. State ex rel Lanier v. Vines, 164 S.E.2d at 168. Only through an auditor can the council insure that the greatest possible proportion of the funds available would be expended for police training. The council itself is not, and was not meant to be, expert in budgeting and finance. Rather than solely relying on the clerk of the court "automatically" to reduce a fine by 9.09% when the judge fails specifically to include the penalty assessment, or to segregate those funds designated by the judge as the penalty assessment, a more uniform, efficient, and competent method of insuring that the police training fund obtains its proper amount would be for the ALEOAC to hire its own auditor for reviews of conformance with § 41-1826. Such an act would be well within the legislative intent and would better serve the purposes of the Council.

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General